



BEFORE THE HEARING EXAMINER  
FOR THE CITY OF REDMOND

In the Matter of the Appeal of

**John Baumann**

of the June 27, 2013 City of Redmond Code  
Administrator's Decision Approving a Temporary  
Use Permit Authorizing a Temporary Encampment  
at Redwood Family Church  
(No. LAND-2013-00929)

NO. LAND-2013-01289

TENT CITY APPEAL

**CITY OF REDMOND'S PREHEARING  
MEMORANDUM OF LAW**

HEARING DATE: AUGUST 7, 2013

**I. INTRODUCTION**

The factual background relating to this appeal is discussed at greater length in the City of Redmond's Technical Committee Report dated July 24, 2013. This memorandum supplements the Technical Committee Report and provides additional legal support for denial of this appeal.

**II. ARGUMENT**

**A. Standard of Review/Burden of Proof.**

A temporary use permit undergoes a Type I review process. Section 21.46.020(A) of the Redmond Zoning Code ("RZC"). Under Type I review, the decision on the application is made by the department director, and such decision may be appealed to the Hearing Examiner. RZC 21.76.060(D). Upon review the "Hearing Examiner shall accord substantial weight to the decision of the department director [for a Type I permit." RZC 21.76.060(I)(4). The appellant

1 has the burden of proving that the decision is not supported by a preponderance of the evidence  
2 or was clearly erroneous. Appellant cannot show by a preponderance of the evidence that  
3 issuance of the temporary use permit violated the criteria for approval set forth RZC 21.46.030 as  
4 the department director determined all criteria were satisfied.

5 Under the clearly erroneous standard, a reviewing body may not substitute its judgment  
6 for that of the decision maker, *Cougar Mountain Assoc. v. King County*, 111 Wn.2d 742, 747,  
7 765 P.2d 264 (1988), and may overturn the decision only if, after a review of the entire record,  
8 the reviewing body is left with the "definite and firm conviction that a mistake has been  
9 committed." *Citizens to Preserve Pioneer Park v. City of Mercer Island*, 106 Wn.App. 461, 473,  
10 24 P.3d 1079 (2001). Here, Appellant cannot meet his burden as no mistake had been made.

11 **B. The City Properly Issued the Temporary Use Permit.**

12 1. The Decision Criteria for Issuance of a Temporary Use Permit were Satisfied.

13 Under RZC 21.46.030, a temporary use may be authorized only when all the following  
14 determinations can be made:

- 15 1. The temporary use will not impair the normal, safe, and effective operation of a  
16 permanent use on the site.
- 17 2. The temporary use will not significantly impact public health, safety or  
18 convenience, or create traffic hazards or congestion, or otherwise interrupt or  
19 interfere with the normal conduct or uses and activities in the vicinity.
- 20 3. The temporary use will not be materially detrimental to the surrounding uses in  
21 terms of traffic, noise, and other external effects.

22 The Notice of Decision (Attachment 6 to Staff report) at pages 6-7 addresses each criterion and  
23 how each is satisfied. From Appellant's August 5, 2013 submittal in response to Prehearing  
24 Order 3, it appears Appellant is claiming an adverse impact under RZC 21.46.030(2) or (3), more  
25 specifically, an increase in crime.

26 2. Appellant's Fear of Crime is Unfounded and Not a Basis for Denial of a Land Use  
Permit. Unsubstantiated, generalized fears of area residents of criminal activity cannot be the  
basis for denial of a land use permit. *Sunderland v. City of Pasco*, 127 Wn.2d 782, 787, 795, 903

1 P.2d 986 (1995). Appellant's prehearing submittal includes several pages relating to criminal  
2 activity around the nation relating to homeless individuals as support for his argument that he is  
3 impacted by crime. Several of the records provided contain hearsay, unidentified speakers, and  
4 no basis to measure veracity of the content. Should those records be allowed in the record, the  
5 City would point out that the records contain information that refutes Appellant's argument.  
6 Specifically:

- 7 • City of Bothell memorandum from Chief of Police to Interim City Manager dated  
8 September 30, 2004: "[W]e did not see an increase in crime in the Maywood Hills  
9 neighborhood."
- 10 • Printout with Heading "Local News | Tent city doesn't seem to affect crime rates |  
11 Seattle Times Newspaper": "The story is basically the same at each jurisdiction.  
12 The data doesn't indicate any increase in crime or public-safety issues or calls for  
13 service."

14 Should these documents be excluded from the record, the City will move to submit the same as  
15 City exhibits, and if not admitted, the City will withdraw reference to the above bulleted items.

16 If Appellant's exhibits submitted August 5, 2013 are admitted, Appellant's references  
17 relating to other locations are misplaced. For example, who knows whether permits were  
18 acquired for such sites, whether conditions were followed, whether the encampment had rules  
19 that were enforced. Such references cannot be viewed as substantial evidence that the same will  
20 happen in Redmond. Instead, these references are evidence of an unsubstantiated, generalized  
21 fear based on stereotypes and popular prejudices which courts have long held cannot justify  
22 zoning restrictions. *Sunderland*, 127 Wn.2d at 794, citing as example, *Buchanan v. Warley*, 245  
23 U.S. 60, 79-82 (1917).

24 3. The Vicinity Map Provided in the Public Notice Appropriately Represented the  
25 Vicinity of the Encampment and was not Deceptive. Appellant claims the plans and drawings  
26 submitted did not show the true size and location of the tent city. The drawing with the "oval" is  
intended to show the site as it relates to the adjacent public rights-of-way, as will be established

1 by oral testimony. The site plan that immediately follows shows the full size of the encampment.  
2 Looking at the notice as a whole the public was able to see the representation of the encampment.

3 To the extent this argument could be construed as a due process claim, the Hearing  
4 Examiner is without authority to make a ruling on such a claim. The office of the hearing  
5 examiner is an administrative office created by the Redmond City Council. Section 4.28.010 of  
6 the Redmond Municipal Code. "[H]earing examiners have only the authority delegated to them  
7 by the Council." *Woodinville Water District v. King County*, 105 Wn. App. 897, 906, 21 P.3d  
8 309 (2001). Purely legal issues beyond the scope of interpreting and applying local regulations  
9 fall outside an examiner's review authority. *Chaussee v. Snohomish County Council*, 38 Wn.  
10 App. 630, 638, 689 P.2d 1084 (1984). Nowhere does the Redmond Municipal Code or the  
11 Redmond Zoning Code delegate to the Hearing Examiner the authority to consider and rule upon  
12 constitutional issues and as such the Hearing Examiner is without jurisdiction to rule on such  
13 issues.

14 4. Walking Conditions on Redmond-Woodinville Road. In Appellant's August 5,  
15 2013 submittal in response to Prehearing Order 3, Appellant states that the subject area is an  
16 unsafe walking zone and that on that basis alone tent city should not be allowed. Appellant  
17 attempts to submit pages from a preliminary plat approval on his property as evidence of unsafe  
18 walking conditions. Appellant ignores that state law, at RCW 58.17.110, provides that no  
19 subdivision shall be approved unless, among other conditions, the plat includes sidewalks and  
20 other planning features that assure safe walking conditions for students who walk to or from  
21 school. No such requirement applies to temporary uses under the Redmond Zoning Code.

22 5. Appellant's Allegation that a Conditional Use Permit was Required is Misplaced  
23 Because a Conditional Use Permit was Issued for the Site. In Appellant's August 5, 2013  
24 submittal Appellant suggests that because the potential occupancy at the site may be greater than  
25 250 persons, a conditional use permit should have been required. In fact, the City approved a  
26 conditional use permit for a church and day care facility on the site by way of Resolution No.

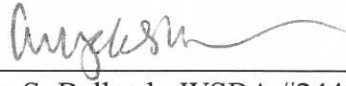
1 428, approved on June 7, 1977. A copy of the resolution will offered as a City exhibit at the  
2 hearing.

3 **III. CONCLUSION**

4 Community displeasure of a project is not enough to overturn a decision granting a land  
5 use permit. *Anderson v. Pierce County*, 86 Wn.App. 290, 305, 936 P.2d 432 (1997). If  
6 community displeasure is not enough, nor is the voice of a single property owner. Appellant has  
7 not met the burden of showing that the decision is not supported by a preponderance of the  
8 evidence or was clearly erroneous. Instead, the evidence shows that the application for the  
9 temporary use permit met the criteria for issuance, and the City conditioned the permit to  
10 mitigate land use impacts from the project as both a temporary use and through additional  
11 regulations specific to temporary encampments in accordance with chapter 21.46 of the  
12 Redmond Zoning Code. As such, the appeal should be denied.

13 DATED this 7<sup>th</sup> day of August, 2013.

14 OGDEN MURPHY WALLACE, P.L.L.C.

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16 By:   
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